



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MRA/152545

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on November 07, 2013, at Port Washington, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's patient liability and the community spouse income allocation.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074-0994

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County. He was admitted to Cedar Springs Nursing Home in October, 2012. He has a community spouse, [REDACTED].

2. On January 22, 2013, the Petitioner applied for Medical Assistance (MA). The application was approved on March 1, 2013 with a patient liability of \$155.33/month.
3. In April, 2013, the agency received a report that the Petitioner's income from a retirement account would increase effective May 1, 2013. Based on this report, on April 15, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his monthly cost share would increase to \$2,074.22 effective May 1, 2013.
4. On June 10, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his monthly cost share would decrease to \$2,020.39 effective July 1, 2013.
5. Petitioner's gross monthly income includes \$2,183.90 from Social Security, \$1,918.89 from a [REDACTED] annuity and \$91.84 from a [REDACTED] retirement policy. His total monthly income is \$4,194.63. Petitioner has monthly Medicare premiums of \$154.20, a Medicare drug plan payment of \$22.70 and a personal needs allowance of \$45. Total monthly available income is \$3,972.73.
6. [REDACTED] has gross monthly income from Social Security of \$820.61.
7. [REDACTED]'s monthly expenses are \$3,992.98 as detailed below:
 

Medicare Part B premium	\$ 104.90
Humana Drug Plan payment	\$ 72.00
Rent	\$1,450.00
Electric	\$ 100.00
Cell phone	\$ 90.16
Cable	\$ 121.00
Renter's Insurance and	
Umbrella Insurance	\$ 24.53
Car Insurance	\$ 40.54
Car maintenance	\$ 50.00
Gas	\$ 80.00
Groceries	\$ 300.00
Newspaper	\$ 31.85
Miscellaneous Household	\$ 200.00
Out-of-pocket Medical	\$ 100.00
Dental Care	\$ 150.00
Credit Cards	\$ 918.00
Accountant Fees	\$ 50.00
Legal Bills	\$ 110.00
8. On September 17, 2013, DHA issued Decision MRA150000 finding that a community spouse income allocation of \$3,875.54 was warranted effective May 1, 2013.
9. On September 19, 2013, the agency determined that the Petitioner's patient liability decreased to \$729.85 effective May 1, 2013 based on the community spouse income allocation ordered in the DHA decision. A Notice of Decision was issued by the agency.
10. On October 3, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

## DISCUSSION

Wis. Stat. § 49.455 is the Wisconsin codification of 42 U.S.C. §13964-5 (MCCA). Among other things, the "spousal impoverishment" provisions at Wis. Stat. § 49.455 direct the Department to establish an income allowance for the community spouse of an institutionalized person. That allowance is \$2,585 per month, as directed by MA policy. See, Medicaid Eligibility Handbook, Appendix 18.6.2. and update in Operations Memo No. 13-17. The policy further allows for an increase in this allocation for excess shelter costs. In this case, ■■■ has excess shelter costs that entitle her to an allocation of \$2,841. The institutionalized person may divert some of his income to his community spouse rather than contributing to his own cost of care. The amount of the diverted income, when combined with the spouse's income, cannot exceed the maximum allowance determined by the agency. Any income of the institutionalized spouse that is not allocated to the community spouse or the personal needs allowance must be paid to the nursing home as the institutionalized person's cost of care share.

An administrative law judge (ALJ) can grant an exception to this limit on income diversion. The ALJ may increase the income allowance following a fair hearing. The ALJ does not have unfettered discretion in creating an exception to the maximum allocation ceiling, however. The relevant statutory provision states that the test for exception is as follows:

- (c) If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse monthly income allowance under sub. (4)(b).

Wis. Stat. § 49.455(8)(c). Thus an ALJ may augment the maximum allocation ceiling only by amounts needed to alleviate financial duress, to allow the community spouse to meet necessary and basic maintenance needs. The MA Eligibility Handbook states that a court or fair hearing can increase the community spouse income allocation if it determines the spouse is not able to provide for his/her necessary and basic maintenance needs with the amount allocated. MA Handbook, § 18.6.2.

In DHA Decision MRA150000, ■■■'s expenses for cable and a newspaper subscription were not allowed. The amount requested for credit card debt reduction was increased to allow for more than interest charges to be paid monthly. ■■■'s monthly needs were determined to be \$4,686.12. A determination was made that total income available for allocation from Petitioner to ■■■ was \$3,875.54 (\$4,169.44 gross monthly income - \$45 personal needs allowance - \$248.90 insurance premiums).

Since that decision, additional information has been verified with regard to the Petitioner's income and ■■■'s expenses. A \$72 health care premium was determined to be for ■■■ rather than for the Petitioner. Therefore, her monthly needs are \$4,758.12. Further, it was determined that Petitioner has another annuity that provides the Petitioner with an additional income of \$91.84/month. His total monthly available income is \$3,972.73.

■■■ has gross monthly income of \$820. Based on her monthly expenses of \$4,758.12, she needs \$3,938 from the Petitioner to cover her expenses. Therefore, I find that a spousal allocation of \$3,938 is warranted based on the evidence.

For Petitioner's patient liability, I conclude that, based on the evidence, his monthly liability is \$34.93. His gross income is \$4,194.63/month. The community spousal allocation is \$3,938. He has monthly

health insurance premiums of \$154.20 and \$22.70. He is allowed a monthly personal allowance of \$45. Subtracting these items from his monthly gross income leaves a patient liability of \$34.93.

### **CONCLUSIONS OF LAW**

A spousal allocation from Petitioner to ■ in the amount of \$3,938/month is warranted. The Petitioner's monthly patient liability is \$34.93.

**THEREFORE, it is**

### **ORDERED**

That this matter be remanded to the agency with instructions to allow a spousal allocation of \$3,938/month effective May 1, 2013 and enter Petitioner's patient liability as \$34.93/month effective May 1, 2013.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

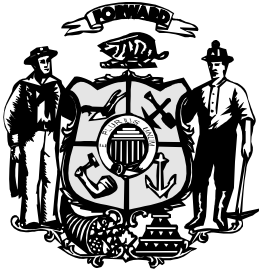
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of December, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 17, 2013.

Ozaukee County Department of Social Services  
Division of Health Care Access and Accountability  
[amcintyre@niwlaw.com](mailto:amcintyre@niwlaw.com)